

**Revising for Effective Legal Writing**

Lou Jones Breakfast Club  
September 9, 2014  
Professor Lisa Mazzie  
Marquette University Law School

By PresenterMedia.com

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All week people have been laughing at my work - some even post it on their wall.

“You’re a cartoonist?”

“No. A lawyer.”

“Damn.”

WORST BRIEFS EVER

© 2009 Coutoons & David E. Mills

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***“I don’t write drafts; I write final copy.”***  
*Anonymous 1L law student*

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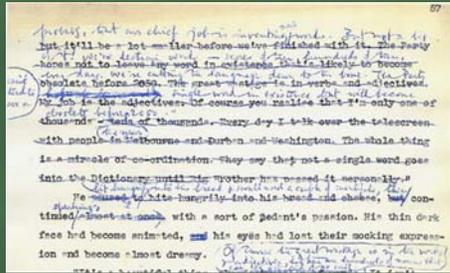
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### Revising Your Argument




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And in the outset we may as well be frank enough to confess, and, indeed, in view of the seriousness of the consequences which upon fuller reflection we find would inevitably result to municipalities in the matter of street improvements from the conclusion reached and announced in the former opinion, we are pleased to declare that the arguments upon rehearing have convinced us that the decision upon the ultimate question involved here formerly rendered by this court, even if not faulty in its reasoning from the premises announced or wholly erroneous in conclusions as to some of the questions incidentally arising and necessarily legitimate subjects of discussion in the decision of the main proposition, is, at any rate, one which may, under the peculiar circumstances of this case, the more justly and at the same time, upon reasons of equal cogency, be superseded by a conclusion whose effect cannot be to disturb the integrity of the long and well-established system for the improvement of streets in the incorporated cities and towns of California not governed by freeholders' charters.

*Chase v. Kalber*, 153 P. 397, 398 (Cal. 1915).

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- To fill the page.
- To show how smart we are.
- Because we emulate what we read.
- Because we don't really understand what we're writing about.

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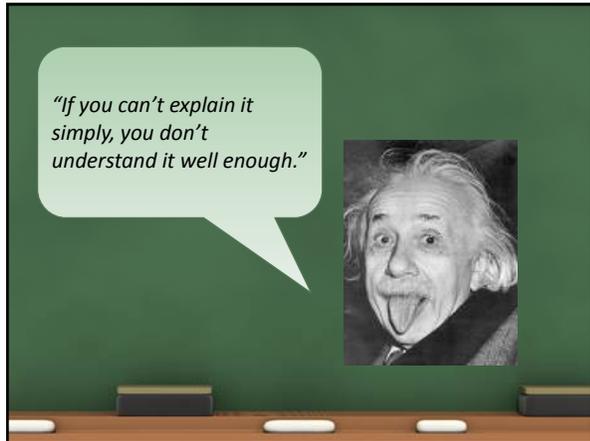
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<p style="text-align: center;">UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION</p> <p>ZACHARY BELL, et al., Plaintiffs, v. CASE NO: 8:12-cv-1001-T-23MAP HEEDEN ENTERPRISES, INC. d/b/a INFINITY TECHNOLOGY SOLUTIONS Defendant.</p> <p style="text-align: center;"><b>ORDER</b></p> <p>On August 3, 2012, the plaintiffs moved (Doc. 22) for leave to submit a motion that exceeds the page limit. The motion states, "The complex factual and legal issues [involved] make it difficult to meet the page limitation of twenty-five [ ] pages." Two hours later and without leave, the plaintiffs submitted (Doc. 23) a twenty-nine-page motion. Based on the mistakes present that this FLSA collective action presents atypically complex issues, the motion to exceed the page limit (Doc. 22) is <b>DENIED</b>. The motion for conditional collective status (Doc. 23) is <b>STRICKEN</b>.</p> <p>A review of the proposed, twenty-nine-page motion's commencement confirms that a modicum of informed editorial revision easily reduces the motion to twenty-five pages without a reduction in substance. Compare this</p>	<p>Plaintiffs: ZACHARY BELL; BENJAMIN PETERSON; ERIC SENEVY; and LARRY ROBINSON; (hereinafter referred to as "Plaintiffs"), individually and on behalf of all others similarly situated ("Class members"), by and through the undersigned counsel and pro se to the First Federal District of Florida, the "FLSA"; 29 U.S.C. § 216(b) files this motion seeking an order (a) to conditionally certify that there is a collective class action, (b) to require the Defendant, HEEDEN ENTERPRISES, INC. d/b/a INFINITY TECHNOLOGY SOLUTIONS (hereinafter "Defendant") to produce and disclose all of the names, [ ] and last known addresses, [ ] and telephone numbers of the [ ] each potential [ ] class member, [ ] and (c) to authorize notice of this action to each similarly situated person employed by Defendant within the year [ ] to inform them of the pendency of this suit and to inform them of their right to opt out of this lawsuit. In support of this Motion, Plaintiff sets forth the following facts and provides this Court with a Memorandum of Law in support of the Motion, and asserts as follows:</p> <p>To this:</p> <p>Plaintiffs move (1) to conditionally certify a collective action; (2) to require the Defendant to produce the name, address, and telephone number of each potential class member; and (3) to authorize notice of this action to each similarly situated person employed by Defendant within three years.</p> <p>Concentrating on the elimination of redundancy, verbosity, and legalism (see, e.g., BRYAN A. GAENER, THE ELEMENTS OF LEGAL STYLE (2d ed. 2002)), the plaintiffs may submit a twenty-five-page motion on or before August 15, 2012.</p> <p>ORDERED in Tampa, Florida, on August 7, 2012.</p> <p style="text-align: right;"> STEVEN M. BRENNAN UNITED STATES DISTRICT JUDGE</p>
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**Revising Your Argument**  
**Large Scale Revising**

- Check and double check:
  - Do you have all parts required for your document?
  - Do all parts contain everything they need to contain?
  - Have you followed all court rules on formatting and page or word limits?

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**INTRODUCTION**

The Plaintiff, Jennifer Bonkowski, requests the Court deny the Motion to Dismiss, for failure to state a claim for which relief can be granted. Defendant, [Michael Bonkowski](#), presents the Motion claiming that public policy has the Complaint's only claim set forth. Defendant alleges that Mr. Bonkowski lacks a familial relationship with the decedent and that public policy bars her recovery. Mr. Bonkowski puts forth a good faith argument that including domestic partnerships is a reasonable expansion of the recoverable category established by case law. [See: \*Bowers v. Zachary\*, 183 Wis.2d 427, 517 N.W.2d 432 \(1994\)](#). Mr. Bonkowski claims that allowing domestic partners to recover will not violate the public policy that establishes recoverable bystanders in negligent infliction of emotional distress cases. The goal of public policy is to bar recovery in [circumstances](#) that would shock the conscience of society if liability were imposed. Denying Plaintiff the chance to recover gives both the facts of the

**Michael, Ling**  
You need to fully identify the parties the first time you mention them.

**Michael, Ling**  
Fixed it earlier before paragraph please.

[http://www.courts.wisconsin.gov/courts/circuit/circuit.html](#)

I will not edit the content throughout the paper, but you need to know that for comment replies throughout.

**Michael, Ling**  
The reference is to you.

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**Small Scale Revising**

- Paragraphs
  - Do paragraphs begin with a strong thesis sentence?
  - Do paragraphs stay on one topic?
  - Do all sentences in the paragraph connect together?
  - Does one paragraph transition to the next?
  - Are paragraphs a reasonable length?

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**Small Scale Revising**

- Sentences & Words
  - Evaluate each sentence with a critical eye, looking for ways to make your writing better.

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### Which is better?

- The liability of a firm to third parties for acts or defaults of a broker depends on whether the broker is considered to be an agent of the firm.
- A firm is liable to third parties for acts or defaults of the broker if the broker is an agent of the firm.

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### Phrasing Your Sentences

- Omit needless words
- Vary sentence length, but average about 20 words per sentence
- Keep subjects and verbs close together – at the beginning of the sentence
- Prefer active voice over passive voice, but if you choose passive voice, do so purposely
- End sentences emphatically

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### Choosing Your Words

- Omit needless words
  - *TIP: Figure out what you're trying to say and cut to that essence.*

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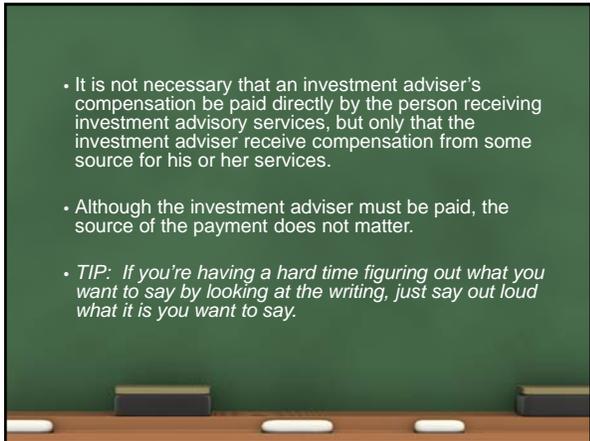
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- It is not necessary that an investment adviser's compensation be paid directly by the person receiving investment advisory services, but only that the investment adviser receive compensation from some source for his or her services.
- Although the investment adviser must be paid, the source of the payment does not matter.
- *TIP: If you're having a hard time figuring out what you want to say by looking at the writing, just say out loud what it is you want to say.*

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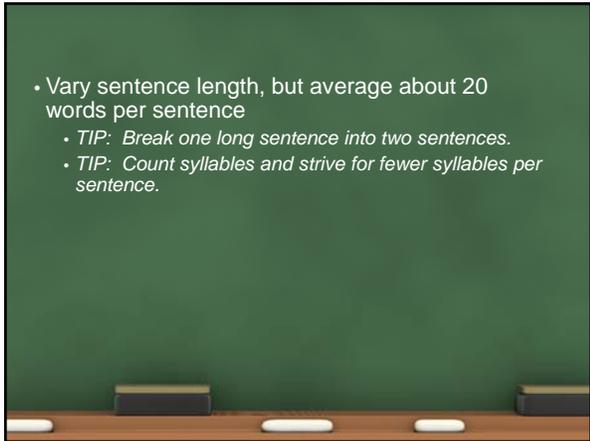
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- Vary sentence length, but average about 20 words per sentence
  - *TIP: Break one long sentence into two sentences.*
  - *TIP: Count syllables and strive for fewer syllables per sentence.*

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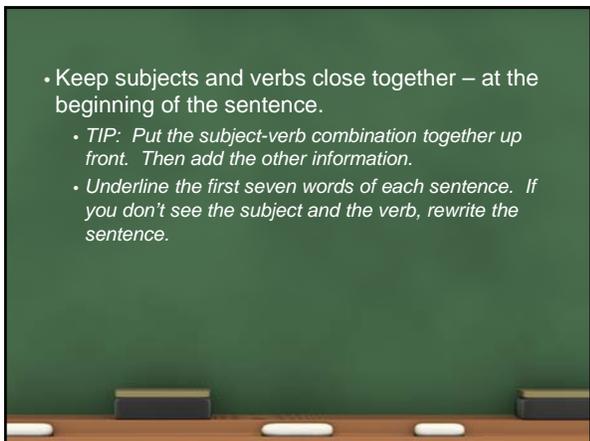
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- Keep subjects and verbs close together – at the beginning of the sentence.
  - *TIP: Put the subject-verb combination together up front. Then add the other information.*
  - *Underline the first seven words of each sentence. If you don't see the subject and the verb, rewrite the sentence.*

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• If any partner becomes a bankrupt partner, the partnership, at its sole discretion, exercisable by notice from the managing general partner (including any newly designated managing partner) to the bankrupt partner (or its duly appointed representative) at any time prior to the 180<sup>th</sup> day after receipt of notice of the occurrence of the event causing the partner to become a bankrupt partner, may buy, and upon the exercise of this option the bankrupt partner or its representative shall sell, the bankrupt partner's partnership interest.

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• If any partner becomes a bankrupt partner, **the partnership**, at its sole discretion, exercisable by notice from the managing general partner (including any newly designated managing partner) to the bankrupt partner (or its duly appointed representative) at any time prior to the 180<sup>th</sup> day after receipt of notice of the occurrence of the event causing the partner to become a bankrupt partner, **may buy**; and upon the exercise of this option the bankrupt partner or its representative shall sell, **the bankrupt partner's partnership interest**.

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• **The partnership may buy a bankrupt partner's interest.** To exercise its option to buy, the managing partner must provide notice to the bankrupt partner no later than 180 days after receiving notice of the event that caused the bankruptcy.

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- Prefer active voice over passive voice, but if you choose passive voice, do so purposely
  - TIP: Find and circle all "to be" verbs — is, was, are, were, has, had, have -- that are followed by a verb that ends in "-ed." Get rid of the "to be" verb. Make the subject do the acting.

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- In 1998, only ten executives were covered by Article 12.
- In 1998, Article 12 covered only ten executives.

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- End sentences emphatically
  - TIP: Know what information you want the reader to remember.

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- Melinda Jackson died three weeks later in Columbus, Ohio. *[Emphasis is on the place]*
- Melinda Jackson died in Columbus, Ohio, three weeks later. *[Emphasis is on the date]*
- Three weeks later, while visiting Columbus, Melinda Jackson died. *[Emphasis is on the death]*
- The defendant asks the court to dismiss the case pursuant to Section 802.06. *[Emphasis is on the rule]*
- The defendant requests, according to Section 802.06, that the court dismiss the case. *[Emphasis is on the requested relief - dismissal]*

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### Choosing Your Words

- Axe legal jargon
- Use strong, precise verbs
- Turn “-ion” words into verbs
- Simplify bloated phrases
- Don't get parenthetical-happy
- Shun newfangled acronyms

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- Axe Legal Jargon
- Legal Jargon
  - as to
  - bring an action against
  - herein
  - subsequent to
  - instant case
  - due to
- Plain English
  - about, of, by, for
  - sue
  - in this [agreement, etc.]
  - after
  - here, this case
  - because

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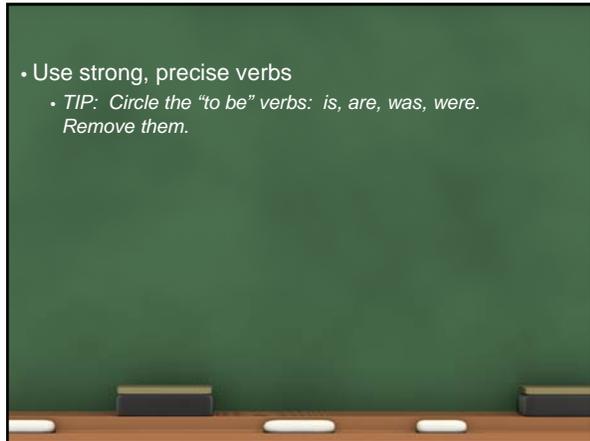
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• Use strong, precise verbs

- *TIP: Circle the "to be" verbs: is, are, was, were. Remove them.*

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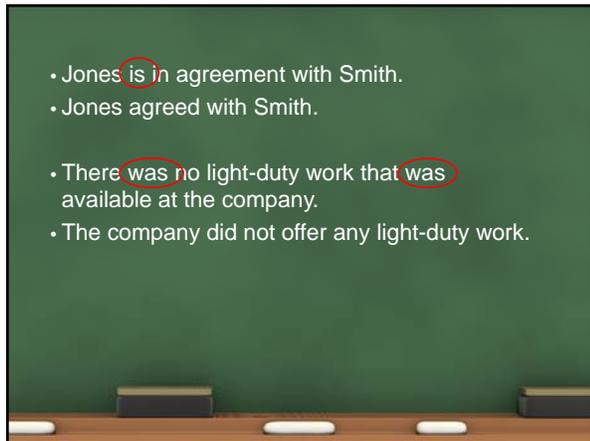
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• Jones **is in** agreement with Smith.

• Jones agreed with Smith.

• There **was** no light-duty work that **was** available at the company.

• The company did not offer any light-duty work.

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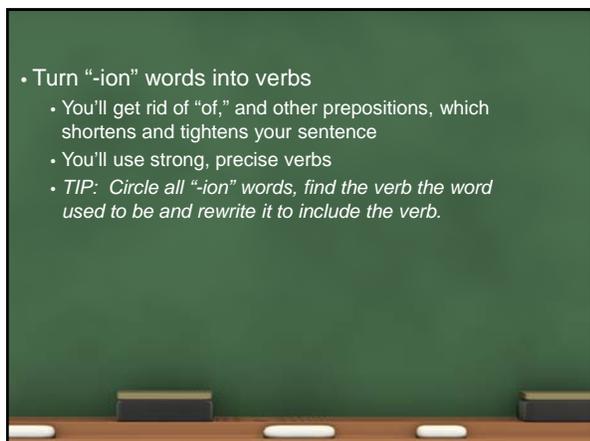
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• Turn "-ion" words into verbs

- You'll get rid of "of," and other prepositions, which shortens and tightens your sentence
- You'll use strong, precise verbs
- *TIP: Circle all "-ion" words, find the verb the word used to be and rewrite it to include the verb.*

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• Wordy "-ion" phrases

- are in mitigation of
- in violation of
- conduct an examination of
- make an accommodation for
- make a provision for
- provide a description of
- submit an application for
- take into consideration

• Better Verbs

- mitigate
- violate
- examine
- accommodate
- provide for
- describe
- apply
- consider

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• Simplify bloated phrases

- *TIP: Do a "Find" search for the word "of" and other prepositions*

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**How Many Fs?**

FINISHED FILES ARE THE RESULT OF YEARS OF SCIENTIFIC STUDY COMBINED WITH THE EXPERIENCE OF YEARS.

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FINISHED FILES ARE THE RESULT OF YEARS OF SCIENTIFIC STUDY COMBINED WITH THE EXPERIENCE OF YEARS.

FINISHED FILES ARE THE RESULT OF YEARS OF SCIENTIFIC STUDY COMBINED WITH THE EXPERIENCE OF YEARS.

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- Bloated Phrase
  - an adequate number of
  - at the present time
  - at the time when
  - at this point in time
  - during such time as
  - during the course of
  - for the reason that
  - in the event that
  - is able to
  - on the ground(s) that
  - prior to
  - the majority of
  - until such time as
- No Bloat
  - enough
  - now
  - when
  - now
  - while
  - during
  - because
  - if
  - can
  - because
  - before
  - most
  - until

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- Don't get parenthetical-happy
  - *TIP: Use parentheses to identify someone/something only when there's a genuine chance for the reader to become confused.*

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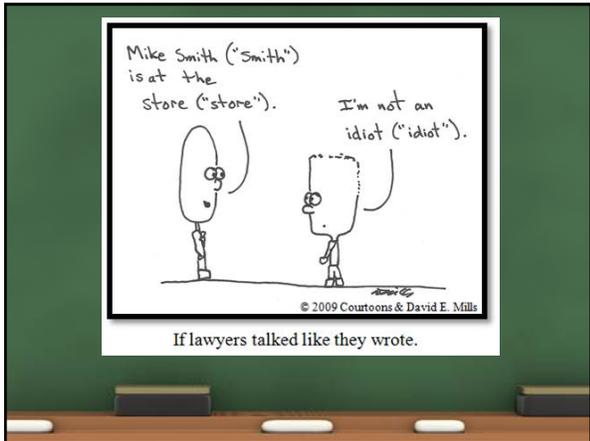
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• Shun newfangled acronyms

**Greenwire**  
THE LEADER IN ENERGY & ENVIRONMENTAL POLICY NEWS  
AN E&E PUBLISHING SERVICE

**LAW: Judge tells agency lawyers to kill the acronyms ASAP** (Tuesday, November 20, 2012)

**Lawrence Hurley, E&E reporter**

A senior federal judge has declared war on acronyms.

It turns out that judges -- even those who hear numerous cases involving weighty discussions of bureaucratic rules and procedures -- aren't as familiar with federal agency jargon as some lawyers might think.

Senior Judge Laurence Silberman of the U.S. Court of Appeals for the District of Columbia Circuit is particularly annoyed at attorneys going AWOL on their duty to write clear English.

He vented his frustration during an oral argument yesterday.

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**Final Thoughts . . .**

- Give yourself a break; put the brief aside for a day.
- Do edits and proofreads on a hard copy.
- Read your brief from end to beginning to catch errors.
- Check your citations separately.
  - Highlight all citations.
  - Go back and check each highlighted citation.

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Thank you!

Questions?

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414.288.5367



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